

In re: H.P. ISLAND-WIDE, INC.
PACA Docket No. D-01-0012.
Decision and Order filed May 1, 2001.

PACA - Default - Full payment, failure to make, when due.

Christopher P. Young-Morales, for Complainant.
Donald M. Lefari, New York, NY, for Respondent.
Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. ' 499a *et seq.*) hereinafter referred to as the "Act", instituted by a Complaint and Notice to Show Cause filed on March 2, 2001, by the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. The Complaint and Notice to Show Cause alleges that during the period August 1999 through August 2000, Respondent violated Section 2(4) of the PACA (7 U.S.C. ' 499b(4)), by failing to make full payment promptly to 9 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$347,444.65 for 166 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce. The Complaint and Notice further asks that Respondent be required to show cause why it should not be denied a license.

A copy of the Complaint and Notice to Show Cause was served upon Respondent on March 5, 2001. Pursuant to Section 1.136 of the Rules of Practice (7 C.F.R. ' 1.136), Respondent had 10 days from that date to respond and file an answer with the Hearing Clerk. No answer was filed. The time for filing an answer having run, and upon the motion of the Complainant for the issuance of a Default Order, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. ' 1.139).

Findings of Fact

1. H. P. Island-Wide, Inc. is a corporation organized and existing under the laws of the State of New York. Its business and mailing address is 1681 Richmond Terrace, Staten Island, New York 10310.
2. Respondent became incorporated on March 18, 1999. Mario L. Tiberi is its president and 100 percent stockholder.
3. Respondent has never been licensed under the PACA.

4. As more fully set forth in paragraph 3 of the Complaint, during the period August 1999 through August 2000, Respondent violated Section 2(4) of the PACA (7 U.S.C. ' 499b(4)), by failing to make full payment promptly to 9 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$347,444.65 for 166 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce

5. Respondent filed an application for a PACA license with the PACA Branch of the Agricultural Marketing Service on February 2, 2001.

Conclusions

Respondent's failure to make full payment promptly with respect to the 166 transactions set forth in Finding of Fact No. 4, above, constitutes willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. ' 499b), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. ' 499b). The facts and circumstances set forth above shall be published and Respondent shall be denied a license pursuant to Section 4(d) of the PACA (7 U.S.C. ' 499d).

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. ' ' 1.139 and 1.145).

Copies hereof shall be served upon parties.

[This Decision and Order became effective July 2, 2001.-Editor]